

John R. Keough, III (JK 6013)  
Cody D. Constable (CC 6659)  
**WAESCHE, SHEINBAUM & O'REGAN, P.C.**  
Attorneys for Plaintiff  
Pacific Fruit Inc.  
111 Broadway, 4<sup>th</sup> Floor  
New York, New York 10006  
(212) 227-3550

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**ECF CASE**

-----X  
DEL MONTE FRESH PRODUCE N.A., INC.,  
PACIFIC FRUIT INC.; and GIUMARRA  
INTERNATIONAL MARKETING, INC.

07 Civ. 1887 (DC)

Consolidated with

Plaintiff,  
-against-

07 Civ. 2555 (DC)

07 Civ. 4665 (DC)

ANA DISTRIBUTION, INC. and SUNG "SAM" G.  
KIM,

Defendants.

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**DECLARATION OF CODY D. CONSTABLE**

CODY D. CONSTABLE declares as follows:

1. I am a graduate of Yale University and the Boston University School of Law, and am an associate at the law firm of Waesche, Sheinbaum & O'Regan, P.C. ("Waesche, Sheinbaum"), counsel for Pacific Fruit Inc. ("Pacific Fruit"), a plaintiff in the instant action.

2. I am admitted to practice law in the State of New York, the U.S. District Court for the Southern District of New York, the U.S. District Court for the Eastern District of New York, and the U.S. Court of Appeals for the Second Circuit.

3. Since 2005, I have practiced principally in the area of commercial litigation in the federal courts.

4. Waesche, Sheinbaum was retained on January 19, 2007 by Pacific Fruit, which is a perfected PACA trust beneficiary, to pursue claims against the Defendants herein.

5. Schedule A attached hereto is a true and correct itemization of Pacific Fruit's accrual of interest on each of their unpaid invoices issued to Defendants. The interest is calculated at the statutory prejudgment interest rate of 9% pursuant to N.Y. C.P.L.R. § 5004. The total amount of interest accrued up to and including November 1, 2007 is \$12,366.45. (Such prejudgment interest will continue to accrue after November 1, 2007 until the entry of judgment at the rate of \$38.56 per day).

6. Schedule B attached hereto is a true and correct compilation of time expended and costs advanced for the prosecution of Pacific Fruit's PACA trust claim in this case through October 31, 2007. The totals are \$40,480 in fees and \$2,868.60 in costs.

7. Waesche, Sheinbaum's legal services rendered in this case have been billed at the normal rate of \$400 per hour for John R. Keough, III, a partner at Waesche, Sheinbaum who has 26 years of experience in federal court litigation, and my normal rate of \$200 per hour. I believe that these rates are consistent with the fees charged by attorneys with comparable experience.

8. Our legal services rendered in this case were reasonable and necessary in pursuing Pacific Fruit's PACA trust claim and included, among other things, seeking a Temporary Restraining Order and Preliminary Injunction, issuing discovery requests, and conducting investigation and research.

9. On each of its invoices issued to defendant Ana Distribution, Inc., Pacific Fruit included express language securing Pacific Fruit's right to interest and attorneys' fees which are sums owing in connection with the produce transaction, and which are part and parcel of the underlying PACA trust claim.

10. This Court has already granted Plaintiffs' Joint Motion for Summary Judgment, awarding all relief requested in the Complaints herein. Pacific Fruit respectfully requests that the above-referenced amounts for interest, fees and costs be included in the Court's final Judgment.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at New York, New York, on October 31, 2007.

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/s

CODY D. CONSTABLE

**SCHEDULE A****Pacific Fruit Prejudgment Interest Up To and Including November 1, 2007**From December 21, 2006

9,910.40		
+11,278.40		
+11,232.00		
32,420.80	x 330 days/365 days per year @ 9% per year =	2,638.08

From December 22, 2006

11,278.40	x 329 days/365 days per year @ 9% per year =	914.95
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From December 27, 2006

11,278.40		
+11,232.00		
- 1,123.60		
21,386.80	x 324 days/365 days per year @ 9 per year =	1,708.60

From December 29, 2006

11,278.40		
+11,232.00		
+11,232.00		
33,742.40	x 322 days/365 days per year @ 9% per year =	2,679.06

From January 2, 2007

11,232.00		
- 2,246.40		
8,895.60	x 317 days/365 days per year @ 9% per year =	702.36

From January 8, 2007

12,192.00		
+ 513.60		
+12,192.00		
+12,192.00		
- 609.60		
36,480.00	x 311 days/365 days per year @ 9% per year =	2,797.47

From January 11, 2007

12,192.00	x 308 days/365 days per year @ 9% per year =	925.93
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<b>TOTAL</b>		<b>\$ 12,336.45</b>
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**SCHEDULE B****Pacific Fruit's Attorneys' Fees and Costs Up To and Including October 31, 2007**

<u>Month</u>	<u>Hours</u>	<u>Fees</u>
January 2007	6.3	\$1,880
February 2007	21.5	\$5,280
March 2007	15.0	\$3,380
April 2007	3.7	\$740
May 2007	5.4	\$1200
June 2007	12.8	\$2,660
July 2007	17.2	\$3,500
August 2007	31.3	\$6,840
September 2007	43.8	\$9,920
October 2007	22.6	\$5,080
Total hours and fees:	179.6	\$40,480
Costs:		\$ 2,868.60
<b>Total of fees and costs:</b>		<b>\$43,348.60</b>